IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.12961 of 2007
SANJAY KUMAR
Versus
STATE OF BIHAR & ANR
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4 8.9.2008 Heard Sri Anjani Kumar, learned counsel for the petitioner, and Sri Jharkhandi Upadhaya, learned A.P.P. for the State.

The petitioner has prayed for quashing of order dated 10.1.2007 passed by the learned Chief Judicial Magistrate, Nalanda at Biharsharif, in Silao P.S. case No. 230 of 2006, G.R. No. 1278 of 2006, whereby he has taken cognizance of offence under section 7 of the Essential Commodities Act (hereinafter referred to as "the E.C. Act").

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The Block Development Officer, Ben Block submitted his written report to the Officer incharge, Silao P.S. inter alia alleging that Rajendra Prasad who was a dealer under the Public Distribution System had been authorized to lift rice relating to Sampurna Gramin Yojna for distribution and as he was suffering from ailment, the S.D.O., Rajgir, vide letter no. 107 dated 19.8.2005 had authorized his son, Sanjay Kumar, for cooperating. Rajendra Prasad, subsequently died on 30.8.2003 and after his death his son, Sanjay Kumar, the petitioner herein, was directed to submit a report vide informant's office letters but he had not replied to any of them nor did he take any action towards the deposit of the left over rice. On 28.9.2005 the said Block Supply Officer had inspected the shop and in course thereof no rice was found and it was presumed that whatever rice had been left had been sold in the black market. It has

been reported that 75 quintals rice had been sold in the black market.

It has been submitted on behalf of the petitioner that admittedly the father of the petitioner was a licensee and died on 30.8.2003 and in such situation if any rice at all had been lifted then it would have been during the life time of his father and as such the period of omission and commission committed by the deceased father of the petitioner was prior to 30.8.2003 for which the petitioner could not be held liable, even vicariously, as he was neither the dealer under the Public Distribution System nor had any concern with the alleged rice said to have been left in excess.

There is another aspect of the matter. It appears that the S.D.O., Rajgir, by his letter no. 107 dated 19.8.2005 had authorized the son, the petitioner, for cooperating. Therefore, if he sold the articles from the Public Distribution shop on behalf of ailing and / or his deceased father he had stepped into the shoes of his father and being designated a dealer under the Public Distribution System he could not be prosecuted since Clause 31(2) of the Bihar Trade Articles (Licenses Unification) Order, 1984, exempts the dealer under the Public Distribution System from prosecution since he, for all practical purposes, is an agent of the Government.

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There is yet another aspect of the matter. It is by now well settled by the decisions of the Apex Court as also this Court that for the prosecution under section 7 of the E.C. Act there must be violation of some Order made under section 3 of the E.C. Act . However, in the instant case no Order made under section 3 of the

E.C. Act is said to have been violated.

Having given my anxious thoughts on the issue and in my opinion even on that count he could not have been prosecuted.

Due regard being had to the facts and circumstances of the case the prosecution of the petitioner would amount to an abuse of the process of the Court and the same is accordingly quashed and the application is allowed.

(Abhijit Sinha, J.)

Spd/-

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